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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215087
Party	Plaintiff U.S. Marine Corps
Correspondence Address	PHILIP GREENE US MARINE CORPS ROOM 4B548, THE PENTAGON WASHINGTON, DC 20350-3000 UNITED STATES Philip.Green@usmc.mil
Submission	Plaintiff's Notice of Reliance
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Date	04/30/2015
Attachments	Notice of Reliance 2.pdf(41187 bytes) Interrogatories Response 3 4 2015.pdf(169806 bytes) Document Request Response 3 4 2015.pdf(125055 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 85936128

In the matter of Trademark Opposition No. 91215087

For the mark: MARINE ONE DOWN

**UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
ROOM 4B548
WASHINGTON, DC 20350-3000**

v.

**PETER J. HEALY ("APPLICANT")
P.O. BOX 1523
MORRO BAY, CA 93443**

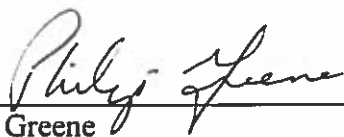
**OPPOSER'S
NOTICE OF RELIANCE**

The Opposer, the U.S. Marine Corps "USMC" or "Opposer") hereby submits the following documents into evidence in the matter referenced above.

1. Copies of Opposer's Response to Applicant's Production of Documents and Things, with attachments. The attachments consist of photos and screen shots showing examples of merchandise bearing the Opposer's registered trademark MARINE ONE,® such as apparel, printed matter (posters, notecards, postcards, etc.), and coffee mugs. The Opposer enters these items into evidence to show the manner in which Opposer licenses its registered trademark MARINE ONE® to private sector companies for use on licensed merchandise.
2. Copies of Opposer's Response to Applicant's, with attachments. The attachments consist of photos and screen shots showing examples of merchandise bearing the Opposer's registered trademark MARINE ONE,® such as apparel, beverage holders, toys, cufflinks, bottle opener/collectible coins. and coffee mugs. The Opposer enters these items into evidence to show the manner in which Opposer permits use of its registered trademark MARINE ONE® to private sector companies for use on approved merchandise.

Respectfully Submitted,

UNITED STATES MARINE CORPS (Opposer)

By: 
Philip Greene
Attorney for Opposer
Associate Counsel (Trademark)
U.S. Marine Corps
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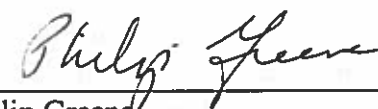
Date: 4-30-2015

Certificate of Service

I hereby certify that a true and complete copy of the foregoing has been served on Peter Healy by mailing said copy on the date shown below, via postage pre-paid, first-class mail to the following address:

Peter J. Healy (Applicant)
P.O. Box 1523
Morro Bay, CA 93443-1523

Respectfully submitted,

By: 
Philip Greene
Attorney for Opposer

Associate Counsel (Trademark)
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Date: 4-30-2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application: Serial No. 85936128

For the mark: MARINE ONE DOWN

UNITED STATES MARINE CORPS ("OPPOSER")
3000 MARINE CORPS PENTAGON
ROOM 4B548
WASHINGTON, DC 20350-3000

v.

PETER J. HEALY ("APPLICANT")
P.O. BOX 1523
MORRO BAY, CA 93443

OPPOSER'S ANSWERS TO INTERROGATORIES

1. "To whom and under what specific terms and conditions has Opposer licensed sale of any product, merchandise, or other thing, designated, labeled, printed, or otherwise including as content of the product, merchandise, or other thing, the term or phrase, irrespective of capitalization or font, 'Marine One'?"

Response: Opposer has granted trademark licenses and issued permission letters to hundreds of parties to allow such parties the right to use certain USMC trademarks and service marks on goods sold to the public. In most instances, permission to use the trademarked term Marine One® is included within the overall permission or license, along with many other USMC trademarks. Inasmuch as these individual permissions and licenses contain privileged and proprietary information, Opposer is not disclosing each and every license agreement. In lieu thereof, Opposer is disclosing a current list of its trademark licensees that are authorized to use the trademarked term Marine One® on merchandise (Attachment A). Please note, this does not necessarily mean that each authorized party necessarily makes and sells Marine One® merchandise. Further, Opposer is disclosing three sample trademark licensing agreements for Applicant's reference (each item is labeled Attachment B). Opposer is also disclosing screen shots of examples of merchandise available to the public on the web sites CafePress.com and Zazzle.com, both of which are licensees of the Opposer (each item is labeled Attachment C). Additionally, Opposer is disclosing images of current merchandise items that have

been manufactured at the behest of the HMX-1 Memorabilia Office (each item is labeled Attachment D).

As noted above, Opposer respectfully asserts that portions of this Interrogatory would require Opposer to disclose privileged information, namely, business-confidential information, as well as attorney-client privileged communications and attorney work product. As such, Opposer hereby objects to this portion of the Interrogatory.

2. "With respect to any and all trademarks claimed by, applied for, or issued to, Opposer, what is Opposer's position concerning the sale or licensing by businesses such as Getty Images, or Corbis, of images inclusive of one or more helicopter operated by USMC HMX-1 Squadron, and labeled, designated, or tagged with words comprising or inclusive of the phrase 'Marine One'?"

Response: When a party (such as Getty or Corbis) makes available to the public photos that identify the subject matter of the photo by name, it is debatable as to whether or not this is a "trademark use," which could constitute infringe and require permission and/or a license, or whether the use of a term is for descriptive or identification purposes alone, and considered a "fair use." The Opposer will assess such instances on a case-by-case basis to determine the nature of each use, and make a determination as to whether or not any action is required.

3. "Explain your understanding of the ways, manners, and respects in which a fictional entertainment product, such as a video game, premised upon Marine helicopters transporting the President not being invulnerable to attack or being forced down, would either undermine or intensify the vigilance of Marine and Secret Service personnel responsible for protecting the safety of the President."

Response: The Opposer objects to and respectfully declines to respond to this question, as it does not believe that the question is at all relevant to this Opposition. The Applicant has filed to oppose this trademark application in hopes of preventing MARINE ONE DOWN from becoming a registered trademark, for the reasons stated in its Notice of Opposition. Whether or not a video game depicting the President's aircraft coming under attack would "either undermine or intensify" the Opposer's vigilance does not appear to be germane to the Opposition. Opposer respectfully asserts that this portion of Applicant's request is beyond the scope of discovery inasmuch as it is not relevant to the Opposer's claim or defense, nor would it appear to be reasonably calculated to lead to the discovery of admissible evidence. As such, Opposer objects to this Interrogatory, and relies on Fed. R. Civ. P. 26(b)(1).

4. "Explain any and all ways, manners, or respects in which the moral (sic), pride, and reputation of United States Marine Corps HMX-1 squadron are of such an infallible caliber as to have rendered outside the realm of actual possibility that an HMX-1 helicopter might be attacked or forced down."

Response: The Opposer respectfully declines to respond to this question, as it does not believe that the question is at all relevant to this Opposition. As noted above, the Opposer seeks to prevent MARINE ONE DOWN from becoming a registered trademark. This Opposition is not related to "the moral (sic), pride, and reputation of United States Marine Corps HMX-1 squadron," and/or how such things could be impacted by the presence of a video game on the market. Opposer respectfully asserts that this portion of Applicant's request is beyond the scope of discovery inasmuch as it is not relevant to the Opposer's claim or defense, nor would it appear to be reasonably calculated to lead to the discovery of admissible evidence. As such, Opposer objects to this Interrogatory, and relies on Fed. R. Civ. P. 26(b)(1).

5. "Disclose any and all proposed, actual, or contemplated, trademark registration (sic) by, or for Opposer, of one or more name, reference term, designation, code, or other words, numbers, or phrases, identifying a military, armed forces, or governmental operation, mission, flight, cruise, drill, exercise, theater, deployment, target, objective, or war."

Response: The Opposer hereby discloses a complete list of its registered and pending trademarks. It is not in a position of releasing "proposed" or "contemplated" trademarks as no such list exists, nor is the Opposer aware of any such trademarks that are currently proposed or contemplated. Opposer therefore objects to this portion of the request, and relies on Section 406.02 of the Trademark Trial and Appeal Board Manual of Procedure (TBMP), Fed. R. Civ. P. 26(b), as well as Fed. R. Civ. P. 34(a)(1), which states that "[a] party may serve on any other party a request within the scope of Rule 26(b) ... (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control." Further, pursuant to TBMP Section 406.02(1)(B)(2), "Generally, a party does not have an obligation to locate documents that are not in its possession, custody or control and produce them during discovery."

6. "What is the permissibility or impermissibility of any license (sic), contractor, or personnel of Opposer, whether enlisted, or commissioned personnel, referring to, naming, designating, describing, or otherwise identifying any aircraft operated by Marine Helicopter Squadron One, or HMX-1, as 'Marine One' alone and apart from any other name, designation, description or other identification, such as "Helicopter Squadron One" or 'HMX-11'? For purposes of this Request the term 'aircraft' means the aircraft itself

distinct and apart from any call-sign or other operational designation of the aircraft while actively engaged in mission specific operation.”

Response: The Opposer is not aware of any information in its possession relating to the “permissibility or impermissibility” of internal or external parties’ use of the term Marine One to identify any aircraft operated by HMX-1. Generally speaking, with respect to its use in the field, “Marine One” is a call sign that refers to the actual military (typically HMX-1) helicopter in which the President is traveling. It is a means of identifying that particular helicopter while engaged in that particular function. For the Applicant’s reference, Opposer notes that the Federal Aviation Administration offers potentially relevant information, at <https://www.faa.gov/documentLibrary/media/Order/ATC.pdf>.

7. “Explain how the trademark registration of the phrase or term ‘Marine One’ is legally distinguishable from actual or potential trademark registration by, or for Opposer, of one or more name, reference term, designation, code, or other words, numbers, or phrases, identifying a military or armed forces operation, mission, flight, cruise, drill, exercise, theater, deployment, target, objective, or war, to wit- ‘Desert Storm’, ‘Operation Iraq Freedom’, ‘Operation Matador’, ‘Operation Sweeny’ or ‘Operation Ripper Sweep’?”

Response: The Opposer is not certain it can provide a satisfactory answer to this Interrogatory, but it will try. A name, slogan, or other identifier may become a trademark, and may become a registered trademark, if it functions as a trademark, i.e., if it is used on or in association with goods and/or services rendered in commerce. If the Opposer successfully registered Marine One® as a trademark, it is because the U.S. Patent & Trademark Office deemed the use of that mark on goods and/or services constituted trademark use. In the event that the Opposer, or any other party, were to apply any other identifier, such as “Desert Storm,” “Operation Iraq Freedom,” etc., on goods or services, and were to otherwise use such identifier as a trademark, then such mark could be rendered registrable as a trademark. Opposer otherwise objects to this question as being overly broad and ambiguous.

8. “Disclose all knowledge, or documentation, you have regarding, or concerning each and any merchandise, or other thing, unlicensed by Opposer, having been, between the year 1957 and the present, manufactured, commercially distributed, provided as a gift, or offered for sale, bearing the designation, label, name, or brand, or otherwise including as content of the product, merchandise, or other thing, the term or phrase, irrespective of capitalization or font, ‘Marine One’.”

Response: In addition to the information provided in response to Interrogatory No. 1, Opposer hereby discloses a list of merchandise items that are or have formerly been

carried by the HMX-1 Memorabilia Office, past and present, of which that Office is now aware (Attachment E). Additionally, Opposer is disclosing images of items of which Opposer is currently aware, merchandise items that are not yet licensed by Opposer (each item is labeled as Attachment F). As noted in its response to Interrogatory No. 1, Opposer respectfully asserts that portions of this Interrogatory would require Opposer to disclose privileged information, namely, business-confidential information, as well as attorney-client privileged communications and attorney work product. As such, Opposer is refraining from disclosing certain documents relating to certain unlicensed items, and hereby objects to this portion of the Interrogatory.

UNITED STATES MARINE CORPS

Opposer

By:


Philip Greene

Attorney for Opposer

Date:

3/4/2015

Associate Counsel (Trademark)
U.S. Marine Corps
Office of the Counsel for the Commandant
Room 4B548, The Pentagon
Washington, D.C. 20350-3000
703-614-2173


Certificate of Service

The undersigned hereby certifies that on this date, a copy of this paper has been served upon all parties by postage pre-paid, first-class mail to the following:

Applicant and Correspondent:

Peter J. Healy
P.O. Box 1523
Morro Bay, CA 93443-1523

Respectfully submitted,

By: 
Philip Greene
Attorney for Opposer

Date: 3-4-15

Associate Counsel (Trademark)
U.S. Marine Corps
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Room 4B548, The Pentagon
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application: Serial No. 85936128

For the mark: MARINE ONE DOWN

UNITED STATES MARINE CORPS ("OPPOSER")
3000 MARINE CORPS PENTAGON
ROOM 4B548
WASHINGTON, DC 20350-3000

v.

PETER J. HEALY ("APPLICANT")
P.O. BOX 1523
MORRO BAY, CA 93443

**OPPOSER'S RESPONSE TO APPLICANT'S REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

1. "All documents and things concerning or relating to the licensed sale, or complimentary distribution, of any product, merchandise, or other thing, designated, labeled, printed, branded or otherwise including as content of the product, merchandise, or other thing, the term or phrase, irrespective of capitalization or font, 'Marine One'?"

Response: Please see Opposer's responses to Interrogatory Nos. 1 & 8. As noted therein, Opposer respectfully asserts that portions of this request would require Opposer to disclose privileged information, namely, business-confidential information, as well as attorney-client privileged communications and attorney work product. As such, Opposer hereby objects to this portion of the request. Opposer invokes Fed. R. Civ. P. 26, which specifically exempts privileged information and work product from disclosure.

2. "All documents and things concerning or relating to the unlicensed sale, or complimentary distribution, of any product, merchandise, or other thing, designated, labeled, printed, branded or otherwise including as content of the product, merchandise, or other thing, the term or phrase, irrespective of capitalization or font, 'Marine One'?"

Response: Please see Opposer's responses to Interrogatory Nos. 1 & 8. As noted therein, Opposer respectfully asserts that portions of this request would require Opposer to

disclose privileged information, namely, business-confidential information, as well as attorney-client privileged communications and attorney work product. As such, Opposer hereby objects to this portion of the request. Opposer invokes Fed. R. Civ. P. 26, which specifically exempts privileged information and work product from disclosure.

3. "All documents and other things concerning or relating to permissibility or impermissibility of reference, naming, designation, description, or other identification by any personnel of Opposer, whether civilian, enlisted, or commissioned, to Marine Helicopter Squadron One, or HMX-1, as the 'Marine One Squadron' including or absent additional term, name, designation, description, or other identification."

Response: Please see Opposer's responses to Interrogatory No. 6.

4. "All documents and other things concerning or relating to the permissibility or impermissibility of any licensee, contractor, or personnel of Opposer, whether enlisted, or commissioned personnel, referring to, naming, designating, describing, or otherwise identifying any aircraft operated by Marine Helicopter Squadron One, or HMX-1, as 'Marine One' alone and apart from any other name, designation, description or other identification, such as "Helicopter Squadron One" or 'HMX-11'? For purposes of this Request the term 'aircraft' means the aircraft itself distinct and apart from any call-sign or other operational designation of the aircraft while actively engaged in mission specific operation."

Response: Please see Opposer's responses to Interrogatory No. 6.

5. "All documents and things concerning or relating to any product, merchandise, or other thing, designated, labeled, printed, or otherwise including as content of the product, merchandise, or other thing, the term or phrase, irrespective of capitalization or font, 'Marine One', having been in the past, or presently being, licensed, purchased, offered for sale, or provided as a gift, by any entity of the United States Government other than Opposer United States Marine Corps. For purposes of this Request, the term 'any entity of the United States Government other than Opposer United States Marine Corps', includes, but is not limited to, the Executive Office of the President."

Response: Please see Opposer's responses to Interrogatory Nos. 1 & 8. As noted therein, Opposer respectfully asserts that portions of this request would require Opposer to disclose privileged information, namely, business-confidential information, as well as attorney-client privileged communications and attorney work product. As such, Opposer hereby objects to this portion of the request. Opposer invokes Fed. R. Civ. P. 26, which specifically exempts privileged information and work product from disclosure.

Beyond that, Opposer respectfully refuses to provide a response on behalf of “any entity of the United States Government other than Opposer,” as any such documents, should they exist, are not within the custody or possession of the Opposer. Opposer relies on Section 406.02 of the Trademark Trial and Appeal Board Manual of Procedure (TBMP), and Fed. R. Civ. P. 26(b), as well as Fed. R. Civ. P. 34(a)(1), which states that “[a] party may serve on any other party a request within the scope of Rule 26(b) ... (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control.” Further, pursuant to TBMP Section 406.02(1)(B)(2), “Generally, a party does not have an obligation to locate documents that are not in its possession, custody or control and produce them during discovery.” As such, Opposer objects to this portion of this Request.

Opposer asserts that this portion of Applicant's request is outside the scope of discovery, since the Opposer does not have custody or control over documents and things in the custody or control of “any entity of the United States Government other than Opposer,” including “the Executive Office of the President.”


6. “All documents and things concerning or relating to operations of USMC Helicopter Squadron One, HMX-1, or ‘Marine One’, whether as to operational security, mission completion, personnel morale, or otherwise, being impeded or undermined by public discourse, whether in the form of fictional entertainment or otherwise, of the possibility that an aircraft operated by the United States Marine Corps, transporting the President of the United States, may not be invulnerable to harm by a hostile force.”

Response: The Opposer possesses no documents in response to this request.

7. “All documents and other things concerning the proposed, actual, or contemplated trademark registration by, or for Opposer, of one or more name, reference term, designation, code, or other words, numbers, or phrases, identifying a military, armed forces, or government operation, mission, flight, cruise, drill, exercise, theater, deployment, target, objective, or war.”

Response: The Opposer hereby discloses a complete list of its registered and pending trademarks. It cannot release a document containing “proposed” or “contemplated” trademarks as no such document exists. Opposer relies on Section 406.02 of the Trademark Trial and Appeal Board Manual of Procedure (TBMP), Fed. R. Civ. P. 26(b), as well as Fed. R. Civ. P. 34(a)(1), which states that “[a] party may serve on any other party a request within the scope of Rule 26(b) ... (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control.” Further, pursuant to TBMP Section 406.02(1)(B)(2), “Generally, a party does not have an obligation to locate documents that are not in its possession, custody or control and produce them during discovery.”

UNITED STATES MARINE CORPS
Opposer

By: 
Philip Greene
Attorney for Opposer

Date: 3-4-15


Associate Counsel (Trademark)
U.S. Marine Corps
Office of the Counsel for the Commandant
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Morro Bay, CA 93443-1523

Respectfully submitted,

By: 
Philip Greene
Attorney for Opposer

Date: 3-4-15

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